

# **EXHIBIT D**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
:  
ROBERT SAMPSON, :  
:  
Plaintiff, : 22-CV-5120 (JMA) (AYS)  
:  
May 4, 2023  
:  
V. : Central Islip, NY  
:  
NATIONAL BOARD OF MEDICAL :  
EXAMINERS, :  
Defendant. :  
-----X

TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE  
BEFORE THE HONORABLE JOAN M. AZRACK  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: MARY VARGAS, ESQ.  
Stein & Vargas LLP  
10 G Street NE, Suite 600  
Washington, DC 20002

For the Defendant: CAROLINE MEW, ESQ.  
Perkins Coie LLP  
700 13th Street, NW, Suite 800  
Washington, DC 20005-3960

Court Transcriber: ARIA SERVICES, INC.  
c/o Elizabeth Barron  
274 Hovey Road  
Milo, ME 04463  
Aria@leinen.net

Proceedings recorded by electronic sound recording,  
transcript produced by transcription service

1 THE CLERK: Case 22-CV-5120, Sampson v.  
2 National Board of Medical Examiners. Counsel, state  
3 your appearances please and then Judge Azrack will call  
4 in.

5 MS. VARGAS: Good morning. This is Mary  
6 Vargas for the plaintiff as well as my co-counsel,  
7 Charles Weiner, and my client, Mr. Robert Sampson.

8 THE CLERK: Thank you.

9 MS. MEW: Caroline Mew and Adam Mandelsberg  
10 for the National Board of Medical Examiners.

11 THE CLERK: Great, thanks so much. Judge  
12 Azrack will call in, in a moment.

13 THE COURT: Good morning, it's Judge Azrack.

14 MS. VARGAS: Good morning, your Honor.

15 MS. MEW: Good morning, your Honor.

16 THE COURT: Okay. Ms. Vargas, you requested  
17 a conference?

18 MS. VARGAS: Yes. With the Court's  
19 permission, I asked to be heard on behalf of Mr.  
20 Sampson.

21 THE COURT: Sure, go ahead.

22 MS. VARGAS: This morning, Robert Sampson  
23 stands in the wake of the NBME's destruction. Seven  
24 times Mr. Sampson applied for accommodations from the  
25 NBME. With each new registration, the NBME required

1 him to pay exorbitant fees in order to have his  
2 accommodation request even considered and then denied.  
3 Each year Mr. Sampson missed the residency match took  
4 away and continues to take away not only a year of his  
5 earnings but diminishes his ability to obtain a  
6 residency at all. He's a medical student who's had to  
7 pay out of pocket what he was able and continues to  
8 face almost half a million dollars in legal fees and  
9 costs because of the NBME's actions, money spent just  
10 to access his legal rights.

11 Two weeks ago, the NBME took yet another  
12 precious day away from Mr. Sampson's studying and  
13 argued in the U.S. Court of Appeals that Mr. Sampson is  
14 not entitled to accommodations. Last night, the NBME  
15 claims to have reversed course, in a transparent effort  
16 to evade an order of this Court. And just as he always  
17 was, Mr. Sampson is at their mercy. At any point, they  
18 can retract the accommodations letter issued last  
19 night, changing course on a dime.

20 The NBME has gone into Mr. Sampson's world  
21 and broken everything around him, in violation of --

22 THE COURT: I need to stop you there. I  
23 can't imagine that the Board would do that but why  
24 don't we just -- why don't you just stipulate to it?  
25 Who is on the -- Mr. Mandelsberg is on the phone. I

1 mean, are you really concerned about that?

2 MS. VARGAS: Yes, we are, your Honor. The  
3 NBME's letter issued last night itself on page two  
4 specifies that Mr. Sampson must reapply for  
5 accommodations each time he takes a step of the USMLE.  
6 So we do request and Mr. Sampson does need an order of  
7 protection, and Rule 65 permits a preliminary  
8 injunction motion to be transformed into a permanent  
9 injunction, and that is what he seeks.

10 MS. MEW: Your Honor, this is Carline Mew  
11 for the National Board of Medical Examiners. To  
12 clarify the statement in the letter about requesting  
13 accommodations, it's simply for him to confirm that he  
14 wants the accommodations on a later test. NBME has  
15 unequivocally committed in that letter to providing him  
16 accommodations not only on his upcoming tests but to  
17 subsequent administrations of step 2CK and step three  
18 of the USMLE, and I repeat that unequivocal commitment  
19 right now. The accommodations will be provided.

20 THE COURT: Yeah, I understand that.

21 Okay, so why don't we just let Mr. Sampson  
22 study for step one and move on? I mean, I don't have  
23 any reason to believe that the Board is not going to  
24 stand by what Ms. Mew just said, so what's the relief  
25 you're seeking today, Ms. Vargas?

1 MS. VARGAS: Today, we seek an order to give  
2 Mr. Sampson certainty that the position of the NBME  
3 will not change, that he will not be denied  
4 accommodations when he seeks them.

5 THE COURT: Ms. Mew just committed on the  
6 record that that's the case. She committed on the  
7 record that that's the case, so there's no reason to do  
8 anything other than for Mr. Sampson to put his head  
9 down and keep studying and take the step one and move  
10 on from there. If you want to put something in writing  
11 about why you think you need more, be my guest. But I  
12 don't think you need more and I think the Board has  
13 stepped up and put on the record in a recorded  
14 conference to a federal judge what they believe -- what  
15 they see their obligations are, and I don't see any  
16 reason to doubt them. So if you want to put something  
17 in writing, you can, but I don't think you need to.

18 MS. VARGAS: Thank you, your Honor.

19 THE COURT: Okay, all right, thank you.  
20 Thanks, everybody. Please wish Mr. Sampson good luck.

21 Thank you very much, Ms. Mew. Thank you.

22 MS. MEW: Thank you.

23 MS. VARGAS: Your Honor, this is Mary  
24 Vargas, if I could ask one more question.

25 THE COURT: Sure.

1 MS. VARGAS: Will the Court be setting a  
2 scheduling order to proceed with the remaining relief  
3 sought in this litigation?

4 THE COURT: What is the remaining relief  
5 sought?

6 MS. VARGAS: Mr. Sampson has a claim for  
7 damages. He's suffered incredible damages, financial  
8 losses, as the result of the denial of accommodations  
9 by the NBME. So he seeks declaratory relief as well as  
10 the damages incurred, and of course attorneys' fees and  
11 costs.

12 THE COURT: Well, it seems to me you're  
13 getting all the relief that you asked for. You know,  
14 I'll have to have briefing on whether there are damages  
15 that you're entitled to, so why don't you confer and  
16 come up with a briefing schedule?

17 MS. VARGAS: Thank you, your Honor.

18 THE COURT: Anything else?

19 MS. VARGAS: Not at this time.

20 MS. MEW: No, your Honor, thank you.

21 THE COURT: Thank you.

22 \* \* \* \* \*


23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I certify that the foregoing is a correct  
transcript from the electronic sound recording of the  
proceedings in the above-entitled matter.

A rectangular box containing a handwritten signature in black ink. The signature appears to be "E. Barron" with a long horizontal flourish extending to the right.

ELIZABETH BARRON

June 8, 2023